

APPEAL NO. 031682  
FILED AUGUST 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 5, 2003. The hearing officer resolved the disputed issues by deciding: (1) that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth, seventh, eighth, and ninth quarters; (2) that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) because he was not entitled to them for 12 consecutive months; and (3) that the respondent (self-insured) is relieved of liability for SIBs because of the claimant's failure to timely file an application for the sixth, seventh, and eighth quarters from the period of May 28, 2002, through February 9, 2003. The claimant appealed the hearing officer's determinations. The self-insured responded, urging affirmance.

DECISION

Affirmed.

We note at the outset that the claimant attached documents to his appeal that were admitted into evidence at the CCH. The claimant then supplemented his appeal with additional copies of documents that were admitted at the CCH, and other documents that were not admitted at the CCH, specifically a letter dated June 21, 2003, from his treating doctor, Dr. K. In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. We do not find that to be the case with the documents attached to the appeal, as the information in those documents was clearly known to the claimant prior to the CCH and could have been obtained and presented with the exercise of due diligence by the claimant. Under these circumstances, we cannot conclude that the attached documents meet the criteria for requiring a remand and we decline to consider them for the first time on appeal.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant argued at the CCH that he had no ability to work during the qualifying periods for the sixth, seventh, eighth, and ninth quarters. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee as been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer specifically found that during the qualifying periods in dispute, the claimant had some ability to work, that he made no efforts to secure employment and was not enrolled in any vocational rehabilitation program, and that he did not make a good faith effort to obtain employment commensurate with his abilities. The hearing officer commented that the claimant provided "several short letters" from his treating doctor but that the letters did not amount to a narrative report because they did not specifically explain how the injury caused a total inability to work during the qualifying periods in dispute. A recitation of medical conditions and treatment followed by a simple statement that the claimant could not work is inadequate under Rule 130.102(d)(4). See Texas Workers' Compensation Commission Appeal No. 002724, decided January 5, 2001. There is sufficient evidence to support the findings that the claimant had some ability to work, did not perform job searches, and did not provide a sufficient narrative that explained how the injury caused a total inability to work.

Given our affirmance of the hearing officer's determination that the claimant is not entitled to SIBs for the sixth, seventh, eighth, and ninth quarters, in addition to his finding that the Texas Workers' Compensation Commission previously determined that the claimant was not entitled to SIBs for the 4th and 5th quarters, we affirm the hearing officer's determination that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) because he was not entitled to SIBs for 12 consecutive months.

Rule 130.105 pertains to the failure to timely file an Application for [SIBs] (TWCC-52). Based upon the evidence before him, which included the TWCC-52s for the sixth, seventh, and eighth quarters, the hearing officer determined that the carrier is relieved of liability for SIBs for the period of May 28, 2002, through February 9, 2003. The evidence reflects that the claimant filed the TWCC-52s on February 9, 2003, which is after all but the last 15 days of the eighth quarter. We conclude that the hearing officer's determination that the carrier is relieved of liability for the sixth, seventh, and eighth quarters for the period of May 28, 2002, through February 9, 2003, is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

JC  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).

---

Veronica Lopez-Ruberto  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Chris Cowan  
Appeals Judge